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Sent: 5/11/2020 4:08:30 PM
To: Fleisig, Erica [Fleisig.Erica@epa.gov]
CC: Anderson, Danielle [Anderson.Danielle@epa.gov]; Buffo, Corey [Buffo.Corey@epa.gov]
Subject: RE: Question about state adoption of wetlands criteria

Erica: Here is what I have from Region 8. The info from SD and WY appear to speak about protection, but does not appear to implicate criteria.

Colorado and Montana: No narrative wetland criteria

North Dakota: [Holly] ND recently adopted (Dec 2018) numeric standards for wetlands:

At 33.1-16-02.1-09 3(f) "Wetlands, including isolated ponds, class 4 lakes not listed in appendix II, sloughs and marshes. The physical and chemical criteria shall be those for class III streams, with exceptions for temperature, dissolved oxygen as listed in g. 6, and other conditions not attributable to municipal, industrial, domestic or agricultural sources."

South Dakota: [Holly] In SD, language for protection of wetlands is as follows:

74:51:01:11. Protection of wetlands as waters of the state. Wetlands are waters of the state and are allowed protection under the provisions of this chapter. The discharge of pollutants from any source, including indiscriminate use of fill material, may not cause destruction or impairment of wetlands except where authorized under § 402 or § 404 of the Federal Water Pollution Control Act as amended to February 4, 1987, or under 40 C.F.R. Parts 257 and 258, Solid Waste Disposal Facility Criteria; Final Rule, as amended to July 1, 1996. The provisions of §§ 74:51:01:06 to 74:51:01:10, inclusive, 74:51:01:12, 74:51:01:34 to 74:51:01:39, inclusive, 74:51:01:52, and 74:51:01:63 to 74:51:01:65, inclusive, apply to all wetlands. In addition, the department shall evaluate wetlands to determine the applicability of such wetlands to the toxic pollutant standards provided in § 74:51:01:55 and Appendix B at the end of this chapter.

Utah: [George] Utah has at times applied a generic narrative criterion (see pasted below) to wetlands. Their narrative criterion is generic (applying to all waters of the state – not specific to wetlands) and Chris Bittner (UDWQ) tells me it has been applied to some previous wetlands problem areas. There is no wetland-specific nor nutrient-specific narrative. There is some UDWQ interest in adding a narrative criterion specifically applicable to wetlands – no sign of any real traction on that though.

R317-2-7 (excerpt)

7.2 Narrative Standards

It shall be unlawful, and a violation of these rules, for any person to discharge or place any waste or other substance in such a way as will be or may become offensive such as unnatural deposits, floating debris, oil, scum or other nuisances such as color, odor or taste; or cause conditions which produce undesirable aquatic life or which produce objectionable tastes in edible aquatic organisms; or result in concentrations or combinations of substances which produce undesirable physiological responses in desirable resident fish, or other desirable aquatic life, or undesirable human health effects, as determined by bioassay or other tests performed in accordance with standard procedures; or determined by biological assessments in Subsection R317-2-7.3.

Wyoming: [Maggie] I don't think WY WQS really have what you're looking for or something that would be a narrative criterion for wetlands. They explicitly apply the same criteria that apply to waters to the adjacent wetlands. They also have a "protection of wetlands" statement. It's kinda weird in that it has one foot in 404 and maybe a toe (?) in 402. It's never come up for me:

Section 12. Protection of Wetlands. Point or nonpoint sources of pollution shall not cause the destruction, damage, or impairment of naturally occurring wetlands except when mitigated through an authorized wetlands mitigation process. When approving mitigation, the department may consider both the ecological functions and the wetland value of the disturbed wetland. This section does not apply to wetlands created by point or nonpoint sources, nor are such wetlands

required to be maintained through continuation of such discharges. Similarly, any manmade wetlands or enhancements which have been credited in the state wetland banking program are not required to be maintained until the credit is used for mitigation purposes. These areas will, however, be protected from discharges of wastes, toxic substances or chemical pollutants as are any other waters of the state.

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Sent: Thursday, May 07, 2020 10:35 AM

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Cc: Buffo, Corey <Buffo.Corey@epa.gov>; Anderson, Danielle <Anderson.Danielle@epa.gov>

Subject: Question about state adoption of wetlands criteria

Hi liaisons,

Do you know off the top of your heads or can you please check in with your regions about whether any states have adopted narrative wetlands criteria (for nutrients or otherwise), and whether there is anything in those narratives or wetland sections about biocriteria?

Betsy B seems to have heard that there are 6 states with narrative wetlands criteria and 10 more states looking to adopt. She mentioned nutrients specifically, but Corey would like us to check for narrative wetlands criteria more broadly and any connection to biocriteria which would be broader than nutrients.

Greg, I'm not sure if this is something that the criteria search tool could capture since I thought that was primarily numerics, but if you have an easy way of searching for these wetlands narratives please let me know.

Jenn, Sara also wants to understand what we released as guidance re: wetlands to states, so I can work with you on the side on that.

I believe we need to have this ready for Sara by next Wednesday 5/13, COB.

Thank you!

-Erica

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